

Fish & Richardson p.c.

Frederick P. Fish
1855-1930

W.K. Richardson
1859-1951

1425 K Street, N.W.
11th Floor
Washington, DC 20005

Telephone
202 783-5070

Facsimile
202 783-2331

Web Site
www.fr.com

Edwin N. Lavergne
(202) 626-6359
lavergne@fr.com

February 11, 2004

VIA ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, D.C. 20554

~

boston

dallas

delaware

new york

san diego

silicon valley

twin cities

washington, dc

Re: **EX PARTE SUBMISSION**

WT Docket No. 03-66; Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands

Dear Ms. Dortch:

Yesterday, Monsignor Michael Dempsey of the Diocese of Brooklyn, David Moore of the Archdiocese of Los Angeles Education and Welfare Corporation, Patrick Gossman, Chair of the National ITFS Association, Todd Gray, counsel to the National ITFS Association, Joseph Chitwood of the University of Arizona, Martin Mangold of the Mississippi EDNET Institute, Leslie Harris, counsel to the Education Community, and the undersigned, counsel to the Catholic Television Network, met with Commissioner Jonathan S. Adelstein and his Legal Advisor for Spectrum and International Issues, Barry Ohlson regarding the above-referenced proceeding.

We discussed whether eligibility rules for holding Instructional Television Fixed Service ("ITFS") licenses should be modified so as to permit ITFS licenses to be held by for-profit entities. Currently, the rules require ITFS licensees to be accredited schools or other governmental or non-profit entities that provide services to accredited schools. We expressed the view that the current eligibility rules for ITFS need to be retained and that open eligibility for ITFS licenses would result, over time, in the *de facto* reallocation of a substantial part of the ITFS band to a commercial service. We also expressed the view that decisions of ITFS licensees to sell their channels in many instances might not be wholly voluntary. Finally, we emphasized that providing educational institutions with access to small amounts of

Fish & Richardson p.c.

Letter to Marlene H. Dortch

February 11, 2004

Page 2

capacity as an educational set-aside on ITFS channels held by for-profit entities would be no substitute for ITFS spectrum licensed to and controlled by educators. In this regard, we pointed out that educators need to retain control for themselves how to best use ITFS spectrum, and share it with commercial operators, to meet their varied and changing educational needs. The attached map was provided to demonstrate plans underway in Mississippi to use ITFS to provide a variety of services, including services related to Homeland Defense, on a regional basis.

Pursuant to Section 1.1206(b)(2) of the Commission's Rules, this summary of our presentation is being filed electronically. Should any questions arise concerning this matter, kindly contact the undersigned.

Respectfully submitted,

/s/ Edwin N. Lavergne

Edwin N. Lavergne
Counsel to the Catholic Television
Network

cc by email: Barry Ohlson